DOCUMENT RESUME

ED 378 699 EA 026 480

AUTHOR Van Patten, James J.
TITLE Sexual Harassment: Issues and Dilemmas.
PUB DATE 94
NOTE 32p.; Paper presented at the Annual Meeting of the National Organization on Legal Problems of Education (San Diego, CA, November 1994).
PUB TYPE Reports - Research/Technical (143) -- Speeches/Conference Papers (150) -- Tests/Evaluation Instruments (160)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS *Civil Rights; Civil Rights Legislation; *Court Litigation; Educational Environment; Educational Policy; Elementary Secondary Education; *Federal Legislation; Freedom of Speech; Guidelines; Higher Education; *School Districts; *Sexual Harassment; State Action

ABSTRACT

This paper presents findings of a study that identified the actions taken by states to deal with sexual harassment in school districts. It also provides a historical overview of federal legislation and court litigation related to sexual harassment, civil rights, and First Amendment rights. Data on state actions were derived from a survey of all state departments of education. Responses were received from 35 state department administrators and 1 from the District of Columbia. Findings indicate that each of the responding departments had either state guidelines and legislation or provided school districts with workshops, materials, and policies. Most had formal complaint procedures and comprehensive definitions of harassment, and they provided information on federal and state legislation to their districts. In addition, interpretation and practice of policy varied greatly among the Office of Civil Rights Regional Offices. Citing the statistic that 85-90 percent of sexual-harassment cases occur between students, it is recommended to take immediate action. Education requires participation by all social institutions and groups. Appendices contain summaries of state departments of education policies, state contact sources, and a copy of the state survey. (LMI)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)
✓ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.
• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
J. Van Patten
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

ED 378 699

Sexual Harassment: Issues and Dilemmas

James J. Van Patten
University of Arkansas, Fayetteville

Sexual harassment claims are increasing at every level and in every institution of society. The purpose of this study was to determine what steps the states are taking to deal with the issue of harassment in school districts. In order to access this information fifty (50) state departments of education were surveyed. Thirty-five (70%) state department administrators and one from the District of Columbia responded. Respondents revealed a variety of interventions to deal with the subject.

The majority of the respondents provide guidelines, workshops,and seminars for the school districts. Others leave the issue to the attorneys in the school districts, and a few are in the process of developing guidelines on the subject. State legislation covering sexual harassment exists in several states. Most respondents have formal complaint procedures, comprehensive definitions of harassment, and make copies of state and federal legislation dealing with harassment available to the school districts. Utah provides guidelines to all districts in the state and trains all state supervisors in harassment issues. As new cases come before state and federal courts, the laws concerning sexual harassment will be clarified and expanded. (See Appendix A and B).

History of Federal Legislation:

Martha M. McCarthy in "The Developing Law Pertaining to Sexual Harassment," *The Education Law Reporter,* (Volume 36, 1-4, 1987:7-14) noted that the issue is complex and federal courts may disagree on how the issue is to be resolved. From the 1970s most allegations have been brought under Title VII since this law specifically prohibits employment discrimination with public and private employers. In the mid 1970s federal courts began interpreting Title VII of the Civil Rights Act of 1964 as providing a remedy for sexual harassment that has an adverse effect on employment such as termination, demotion, or denial of job benefits. In June 1986 the Supreme Court in *Meritor Savings Bank v. Vinson* found two forms of sexual harassment. The first form of harassment dealt with basing conditions of employment on sex and the second form of harassment was where job benefits were not affected but a hostile working environment existed. The Court suggested specific guidelines and policies to address the issue.

McCarthy finds the 14th Amendment prohibition against state action that denies equal protection of the laws another approach to the issue.

Student claims of harassment are generally initiated under the equal protection clause of Title IX of the Education Amendments of 1972 which prohibits discrimination in those institutions receiving federal financial assistance. The law was program specific and applies to employees as well as students. More recent Congressional Legislation expands the equal protection clause of Title IX to the whole institution although there may be only

EA 026 480

Copyright © James J. Van Patten, 1994

BEST COPY AVAILABLE

one program receiving federal financial assistance. Some states may provide greater protection than the federal government in relation to the issue.

Employers Seek Remedy:
So prevalent have harassment lawsuits in industry become that some organizations are trying new methods to deal with increased litigation costs. One company, Kas Tex Corp. of Vermont, California, has pioneered a new approach to the issue by suing six women who claimed sexual harassment. The company is seeking a court declaration stating that it is blameless. A new twist in the case is that the women had not even filed a lawsuit, but their lawyer sent a letter to the company outlining the charges and demanding $282,000 to settle the claims. The case is interesting because it reflects the frustration of executives who often must spend time and money defending themselves while maintaining that they have done nothing wrong. The women complained that a warehouse worker harassed them over a long period of time with lewd language and gestures. The worker was suspended, then fired. Ms. Mandell, the women's lawyer, insists that the company was trying to circumvent the whole system, and that she had received calls from federal and state regulatory agencies fearful that the action would erode safeguards against discrimination. Meanwhile, the fired worker has sued the women and the company for wrongful discharge and libel. (1) Awareness of the harassment issues however will yield added benefits of civility and respect in our workplaces.

Public Schools and Title IX of Education Amendment Acts of 1972:
A 1992 Supreme Court decision, *Franklin v. Gwinnett County Public Schools*, (112 S. Court 1028, 1992), found in a case in Georgia that school districts are liable under Title IX when they fail to address adequately teachers' sexual harassment of students. The Court ruled that school districts are liable for the "full range" of compensatory and punitive damages in cases where teachers sexually harass or assault students. School districts could face civil suits if they fail to take "reasonable actions" to prevent foreseeable sexual harassment.

Particulars: Christine Franklin was a student at North Gwinnett High School in Gwinnett County, Georgia, from September 1985-August 1989. According to the complaint, Franklin was subjected to continual sexual harassment beginning in the Autumn of 1986 from Andrew Hill, a sports coach and teacher employed by the district. Franklin avers that Hill engaged her in sexually oriented conversations, kissed her forcibly on the mouth in the school parking lot, telephoned her at home to ask if she would meet him socially, and on three occasions in her junior year, interrupted a class, took her to a private office, and subjected her to forcible intercourse. Hill resigned after the complaint on the condition all matters pending against him be dropped and that the school close its investigation. The District Court dismissed the case on the grounds that Title IX does not authorize an award of damages; the Court of Appeals affirmed. The Supreme Court reversed the decision of the lower federal courts and ruled that the Gwinnett County Public School District was responsible for financial damages under Title IX remedy. Relying on prior court decisions, Judge White, writing for the court, noted that since *Bell v. Hood,* (327 U.S. 678, 684,1946), when legal rights have been invaded, a federal statute

Copyright © James J. Van Patten, 1994

provides for a general right to sue for such invasion. A federal court may use any available remedy to make good the wrong done. White also noted that from the earliest days of the Republic, the Court has recognized the power of the judiciary to award appropriate remedies to redress injuries actionable in federal court, although it did not always distinguish clearly between a right to bring suit and a remedy available under such a right. The conclusion of the Court was that a damages remedy is available for an action brought to enforce Title IX and its provisions.

In a preliminary ruling in *Patricia H. v. Berkeley Unified School District,* August 1994, a U.S. District Court Judge held a lawsuit alleging sexual harassment based on a "hostile environment" in a public school could be brought under Title IX of the Education Amendments of 1972. The Berkeley California school district agreed to pay $800,000 to settle a lawsuit of two young girls by a music teacher from the district's only high school. With a spotless record and having never been convicted of anything in 23 years of teaching, the lawyer for the district opted for an insurance settlement. The girls' mother sought damages and the teachers removal from the school claiming his presence created a hostile sexual enviroment for the girls. (Joanna Richardson, "States Offer Incentives to Teachers Seeking National Board Certification", *Education Week,* September 7, 1994: 14.)

Student to Student Harassment and Title IX:
Deliberations of the district court in *Jane Doe, and Guardian John Doe v. Petaluma City School District (1993)* (Petaluma Joint Union High School District, Dick Cleclak, Richard Homrighouse, Kenilworth Junior High School et. al.) are interesting. Jane alleges she was repeatedly subject to sexual harassment by other students throughout the seventh and eighth grades, that she informed school officials of the harassment, and that they did not respond adequately. Most of the harassment was verbal, in the form of statements about Jane having a hot dog in her pants, that she was a hot dog bitch, written on the walls of the bathroom, leading her to stop going to the bathroom. In the Court's deliberations it was noted that no court had addressed the question of whether student-to-student sexual harassment is actionable under Title IX. The Office of Civil Rights however identified failure of an educational institution to take appropriate response to student-to-student sexual harassment of which it knew, or had reason to know, was a violation of Title IX as cause of action. The Court held however that no damages may be obtained under Title IX merely for a school district's failure to take appropriate action in response to complaints of student to student harassment. Rather, the school district must be found to have intentionally discriminated against the plaintiff student on the basis of sex. A plaintiff student could proceed against a school district on the theory that its inaction was the result of an actual intent to discriminate on the basis of sex. However in the Jane Doe case, that did not appear to be the theory behind the student's complaint, and the claim was dismissed. However, the school district's position that there is no special relationship between schools and students which would impose a constitutionally required affirmative duty on schools to prevent peer sexual harassment will be examined in more detail as future cases emerge. If such a duty is found, there will be an additional expense of additional school patrols. In other cases of a similar nature, the Court noted that Congress

Copyright © James J. Van Patten, 1994

has the power, with respect to rights protected by the Fourteenth Amendment, to abrogate the Eleventh Amendment immunity which prevents lawsuits from being brought against a state or its agents.

In *Davis v. Monroe County Board of Education Georgia* (August 29, 1994), the U.S. District Court found sexually harassing behavior of a fellow student was not covered by Title IX. Ms. Davis' daughter, LaShonda, was exposed to repeated harassment behavior by a fellow fifth grade student, G.F. La Shonda notified her classroom teacher who assured her the principal had been notified. After continued harassment Ms. Davis notified a board superintendent of the problem. LaShonda's grades fell and she was subjected to mental and emotional stress. Ms. Davis alleged that the board's failure to institute a policy concerning student-to-student sexual harassment caused her daughter's distress. In count two of the complaint, Ms. Davis charged the school with discrimination when it disciplined G.F. for striking a white female student and not for harassing La Shonda, a black female. The complaint dealt with the due process clause of the 14th Amendment alleging that LaShonda was deprived of her liberty interest in being free from sexual harassment and intrusions on her personal security. The District Court for the Middle District of Georgia found the state has no constitutional duty to protect its citizens from private persons. The Court held that section 1983 liability attaches only when the state breaches an affirmative duty which it owes to its citizens. Ms. Davis also stated that the classmate's advances violated Title IX. The Court held that Title IX was not a basis for a cause of action in this case.

The interesting finding in the Davis case was the conclusion that **not every tort can be remedied under federal law**. The Court's finding was that in the 1983 and Title IX claims which sought to hold the school board and the elementary principal responsible for actions of a third party where neither LaShonda nor G. F. was under school custody the school had no affirmative duty. This may be subject to further interpretation. The Due Process Clause does not " transform every tort committed by a state actor into a constitutional violation."

Carole Penfield in *Sexual Harassment at School* (Executive Educator, V15, n2:41-42 March 1993) noted that after the U.S. Supreme Court Gwinnett ruling last year that students who have been sexually harassed by teachers may recover money damages against school districts and administrators will lead to risk avoidance measures. School districts will have to establish clear-cut policy, educate teachers to recognize sexual harassment behaviors, require student complaints to be put in writing, and investigate and document every sexual harassment complaint. The State Department of Education survey suggests school districts are taking the issue seriously.

Constitutional Protection:
In *Doe v. Taylor Independent School District* (1994), the Fifth U.S. Circuit Court of Appeals noted in a ruling that school children have a constitutional right not to be sexually molested by their teachers. The Court also ruled that principals and superintendents can ·

Copyright © James J. Van Patten, 1994

be held liable for molestation if they showed "deliberate indifference." The case involved a teacher at Taylor, Texas, High School who admitted having sexual relations with a fifteen year old student for several months. The relationship was well known, but the principal allegedly played it down and failed to discipline or issue warnings to the teacher about his behavior. The teacher who was also a coach, resigned and was convicted of criminal charges related to molestation of the girl. The Court noted that if the Constitution protects a school child against being tied to a chair or against arbitrary paddling, then surely it protects a child from sexual abuse. The ruling that the principal could be sued for his inaction was one of the first appellate decisions to allow such litigation against a school supervisor. In a dissenting opinion in the Texas case, Judge Will Garwood said the principal was " indecisive, insensitive, inattentive, incompetent, stupid and weak-kneed" but had no constitutional duty to take more action. He also noted that it wasn't clear that sexual abuse occurred because the girl may have been mature enough to have consented freely ("Students' Sexual Rights," *Wall Street Journal*, Friday, March 4, 1994:B8).

In *Lankford v. Doe* (Case No. 93-1918), the Supreme Court (October 3, 1994: 115 Sp.Ct. 70) turned down the appeal of Eddy Lankford, retired principal of Taylor, Texas Lankford was accused in a lawsuit filed by a former Taylor High student of ignoring evidence that she was being sexually abused by one of her teachers. The Fifth Circuit Court had formerly ruled, as noted previously that students have a right under the 14th Amendment to be free of sexual abuse by school employees. After a Federal District Court denied the superintendent and the principal's claims of qualified immunity, a three-judge Fifth Circuit panel affirmed the denial. The administrators petitioned the court for certiorari, which was denied. The Fifth Circuit, sitting enbanc, in an (8-6) ruling found the superintendent entitled to qualified immunity (since he could not be found to have been intentionally indifferent to student's constitutionally protected rights), the principal was not similarly entitled. (Lawrence F. Rossow and Jerry Parkinson, Editors, *School Law Reporter*,Vol. 36, No. 9 NOLPE, Topeka, Kansas:11).

A conference on the subject of sexual harassment in public schools was held in Burlington, Massachusetts, with over 300 school officials from 40 cities and towns in attendance. Middlesex District Attorney, Thomas F. Reilly, and Harvard Professor Jay Heubert, noted that the sexual harassment law is changing rapidly, just as society's notion of what constitutes harassment has changed dramatically in the last twenty years. Heubert noted that comments by boys on a school bus, a teacher touching a student, or pinching a student could lead to serious legal trouble for school districts. Heubert said that many teachers, staff and administrators grew up in a time when behavior now considered unacceptable was acceptable, or even encouraged, and that cultural icons such as James Bond would face numerous sexual harassment complaints if their behavior were practiced today. School administrators, guidance counselors, and individuals who train teachers must develop programs to deal with the issue. Conferences for public school students, teachers, and staff, sensitivity training sessions for college students and faculty, and consciousness awareness sessions for educational administrators will be the end result of court rulings. The challenge will be primarily educational rather than legal but everyone

Copyright © James J. Van Patten, 1994

involved in the educational enterprise will be involved in meeting the new requirements. (2)

Jennifer W. Jacob of Houston's Bracewell & Patterson L.L. P., who is defending the Bryan School District, finds the effort to hold schools liable for student-to-student sexual harassment is misguided. Ms. Jacob noted that schools are not liable in any other context one can think of: student fighting another student, teasing another student, or calling another student names. However in April 1993, the U.S. Department of Education's Office for Civil Rights further opened the door to school-based complaints by acknowledging at least some district responsibility for student-to-student behavior. The Civil Rights office found probable cause that a Minnesota district discriminated under Title IX against a 7 year old girl and her female classmates because it failed to treat boys who were sexually harassing them as violators of the district's sexual-harassment policy. The boys swore at the girls on the school bus, commented lewdly about female sexual organs, and made suggestions for oral sex. (3) (National Law Journal, December 1993)

Higher Education:
Riggs et al., in *Sexual Harassment in Higher Education: From Community to Conflict* noted that many aspects of the issue make it difficult, if not impossible, to control. The act often occurs in private, hard evidence is hard to find, and what happens is subject to different interpretations. Sexual harassment is more than just a moral, legal, or financial liability concern, it is a concern over protecting an atmosphere that is most conducive to our academic ideals.

Therefore, organizations must be proactive in establishing guidelines as to what is considered acceptable behavior and what behavior will not be tolerated. Defining specific undesirable behaviors, setting guidelines for behavior, providing informational sessions in student orientation sessions, repeating the message of expected behavioral patterns are all essential in developing preventative measures for the problem. (4) Sarah Lubman in an article "Judicially Suspect: Campus Speech Codes Are Being Shot Down as Opponents Pipe Up," (*Wall Street Journal*, Wednesday, December 22, 1993:1) notes that a student backlash, litigious-minded public interest groups, and some unfavorable court decisions are beginning to challenge campus speech codes, and antiharassment policies that sometimes impinge on free-speech rights. Lubman cites a case of a loud and obstreperous fraternity at the University of California at Riverside that was banned due to a protest by Hispanic student groups. The Hispanic group found a rush party T-shirt offensive to some of its members. The fraternity fought back noting that the shirt featuring a sombrero-wearing man holding a beer bottle was merely a cartoonist depiction of a south of the border party. The logo "it doesn't matter where you come from as long as you know where you are going" couldn't be more innocuous according to fraternity members. The shirt was designed by a Hispanic fraternity member. The fraternity hired a lawyer, sued in state court alleging violation of First Amendment free speech rights. In November 1993 the fraternity won an out-of-court settlement and reinstatement. As part of the settlement two campus administrators were ordered to sit through First Amendment sensitivity training.

Copyright © James J. Van Patten, 1994

Lubman notes many campuses including the universities of Michigan and Wisconsin have been forced by courts to abandon or narrowly rewrite speech and harassment regulations. She noted that a soon-to-be published survey by the *Freedom Forum First Amendment Center*, a Nashville, Tennessee, press foundation found that 383 U.S. public colleges and universities have some form of speech regulation. Most codes proscribe behavior--threats of violence, for example-- the courts have generally ruled may be legally curbed. But many codes also contain provisions that legal scholars say have consistently been struck down when challenged. About a third, for example, ban "advocacy of offensive or outrageous viewpoints...or biased ideas," and some 15% also punish speech causing " intentional infliction of emotional distress." Corbett Kelly in an article *Youth and Society* (Volume 25, N, 1:93-103, September 1993) investigated 185 college students (51% males and 49% females) recall of sexual harassment by high school teachers. Most thought no teacher harassment took place or that it was not a serious matter, but half cited incidents involving other students. In those cases where sexual relationships were known to exist (over one-third), the majority thought both participants wanted the affair. Linda B. Reilly in a "Study to Examine Actions Perceived as Sexual Harassment" (ED359378, 1992) found female respondents were more likely to consider behaviors to be sexual harassment than males.

However, both males and females felt that forms of sexual harassment in which job security, compensation, or work assignments were conditional on sexual favors were most offensive. Respondents aged 16-18 were consistently less likely to perceive behaviors as sexual harassment than were individuals aged 13-15 or over 18. Race also influenced perceptions of sexual harassment. Caucasians and Hispanics were most sensitive to sexual harassment. Students enrolled in traditional career preparation programs were significantly more likely to be sensitive to sexual harassment than those enrolled in non-traditional programs. Reilly surveyed 638 high school students and adults enrolled in traditional and non-traditional training programs and teachers in 12 New Jersey school districts. The survey was distributed by gender equity project directors.

"Hostile Hallways: The AAUW Survey on Sexual Harassment in America's Schools" (ED356186, June 1993) was the result of study of 1600 public school students in 79 schools throughout the United States in grades 8 through 11, female, male, African American, White, and Hispanic. Students were asked to answer about their school related experiences during school-related activities (on the way to and from school, in classrooms and hallways, on school grounds during the day and after school, and on school trips). A list of 14 types of harassment, half involving physical contact and half involving no physical contact, was developed. Four out of five students reported that they had been the target of some form of harassment during their school lives. One in three girls who had been harassed have experienced unwanted advances, sexual comments, jokes, looks, and gestures, as well as touching, grabbing, and/or pinching in a sexual way, said the actions were commonplace in school. Experiences of student-to-student harassment outnumbered all others, with notable gender and ethic/racial gaps. Adult-to-student harassment was nonetheless considerable with notable gender and ethnic/racial gaps. Public areas were the most common harassment sites, especially as reported by girls. Although the study has

Copyright © James J. Van Patten, 1994

been criticized for weakness of research design, flawed data, and polemical thrust, it points up the need to be aware of the extensive dimensions of the issue.

James Elza in "Liability and Penalties for Sexual Harassment in Higher Education" (*West's Education Law Quarterly*: v 2, n2:235-245, April 1993) noted that to forestall sexual harassment law suits, higher education institutions should: (1) adopt a position on faculty/student amorous relationships; (2) state clearly how complaints are handled and by whom; (3) actively educate faculty, staff, and students concerning sexual harassment; and (4) follow up on any complaints and keep records of the responses. The issue is one in development, the law is being generated through concrete cases and issues. (Some women in other countries, particularly in the third world, tend to feel litigation in regard to the issue is frivolous. They state that there are many more serious issues that ideally ought to take our time and attention. They name a few: poverty, unemployment, crime, homelessness, drug abuse, children of the streets, teen-age pregnancy and other items perceived as more pressing.)

A Personal Observation in the Global Community
While in Ecuador, I found that many English speaking teachers in American schools felt the issue was much ado about nothing depending however on the degree of severity. I might note that there was a gender gap with younger women often supporting the sexual harassment message and older women rejecting it out of hand. Overall, however, in countries with massive unemployment, underemployment, and poverty with people eating out of garbage cans, I noted that many women found the U.S. concern with sexual harassment frivolous in many cases.

Unless otherwise noted, the following information is taken from "Sexual Harassment Revisited" by Susan Bayly in *Synthesis: Law and Policy in Higher Education.*
Title VII: Employers Liable for Sexual Harassment:
Sexual harassment may be actionable under individual state anti-discrimination laws, and general tort law theories such as assault, battery, defamation, intentional infliction of emotion distress, and invasion of privacy. Many of the complaints to date have been brought under Title VII of the Civil Rights Act of 1964 which forbids discrimination in public and private employment on the basis of race, color, national origin, religion, and sex. (Note the Civil Rights Act of 1991 which strengthens federal laws against sex, age, race, ethnic discrimination has greatly strengthened the legal grounds for harassment claims).

Sexual Harassment: Gender Based Discrimination:
This is a legal form of sex discrimination under Title VII meaning that a person would not have been harassed but for his or her gender. Sexual harassment is not limited to males harassing females as witness *Wright v. Methodist Youth Services In, (1981)* where a male claimed he was fired for rejecting his female supervisor's advances. The court ruled the action was sexual harassment.

Copyright © James J. Van Patten, 1994

Definitions:
In *Meritor Savings Bank, FSB v. Vinson* (1986) two definitions of sexual harassment were set forth.

Quid Pro Quo Harassment occurs when sex is made a requirement for obtaining or keeping job benefits. In *Heelen v. Johns-Mansville Corp.* (1978) an employer was libel for "quid pro quo" harassment where a supervisor demanded that an employee share his motel room with him on a business trip and fired her when she refused. This can occur only when an employer has supervisory control over another or is operating as an agent of the employers.

Hostile Environment Harassment: Differs from quid pro quo in that no discriminatory effect on wages, job assignments, or other tangible benefits is required. A complainant must prove that unwelcome gender-based conduct was so severe or pervasive that it unreasonably interfered with the complainant's work performance by creating an **intimidating, hostile, or offensive working environment.** Conversations of a sexual nature, sexual jokes or stories; sexual remarks about a person's clothing, body or sexual relations; and the display of sexually explicit materials may constitute harassment if shown to be unwelcome and sufficiently pervasive or severe to affect a condition of employment. Words alone may be sufficient to create a hostile environment.

Sexual Favoritism:
Employers may be liable for sexual conduct between employees which creates an offensive environment for other workers who are not the subject of sexual overtures.

Employer Liability for Hostile Environment Harassment:
In *Meritor Savings Bank v. Vinson* (1986), the U.S. Supreme Court recognized hostile environment harassment as actionable under Title VII. After determining that the conduct created a hostile environment, the fact-finder must ask: (1) whether the employer actually knew about the harassment but did nothing to stop it. (2) whether the harassment was so pervasive or so severe the employer's awareness can be inferred--the employer "should have known"-- but again, did nothing to stop it. If the answer to either question is "yes" then the employer will be liable. In *Harris v. Forklift Systems* (1993), the U. S. Court of Appeals reaffirmed a District Court ruling that found no abusive working environment for Ms. Harris who had sued her former employer under Title VII of the Civil Rights Act of 1964. The District Court and Court of Appeals found that although the Forklift's president often insulted Harris and made her the target of sexual innuendoes, these factors did not create an abusive environment because they were not so severe as to affect Harris' psychological well being or lead her to suffer injury. The Supreme Court ruling delivered by Sandra Day O'Connor noted that to be actionable as " an abusive work environment" harassment conduct need not "seriously affect an employee's psychological well being or lead the plaintiff to suffer injury." Title VII is violated when there is sufficiently severe or pervasive discriminatory behavior to create a hostile or abusive working environment that a reasonable person would find hostile or abusive. The Supreme Court found the decision of the lower courts in error.

Copyright © James J. Van Patten, 1994

Conduct as Harassment: The Gender Neutral Perspective:
Not every instance of abusive language, comments, joking, teasing will rise to the level of actionable conduct. Conduct constitutes discrimination only when it is so severe or pervasive that it is reasonable to expect it to adversely affect working conditions. This is ultimately a question of perspective. Courts tend to agree that the question must be decided objectively and without reference to the particular sensitivity of the complainant. This test has been generally in terms of "a reasonable man" or "reasonable person" test. The fact find must be gender neutral. In *Rabidue v. Osceola Refining Co.* (1986), the Sixth Circuit Court applied this test to hold that crude language and sexually oriented posters would not interfere with a reasonable person's work or performance when considered in context of an open society that condones public display of written and pictorial erotica at newsstands, on television, and in the cinema. The trend however since that case has been to tighten up on the use of sexual jokes and posters.

Reasonable Woman Tests
Recently courts have rejected a neutral view in favor of one that takes into account a victim's gender. In *Andrews v. City of Philadelphia* (1990), female employees of the Philadelphia police department alleged that abusive language, display of pornographic pictures, anonymous phone calls, and the destruction of property by co-workers and supervisors created a hostile environment. The court found what may not be offensive to men may be offensive to women of reasonable sensibilities. In *Ellison V.Brady* (1991) the Ninth Circuit Court adopted the "reasonable woman" test in a mixed gender workplace.

Sexual Harassment and the First Amendment
Robinson v. Jacksonville Shipyards, Inc (1991) was one of the first cases where the court addressed at length the interplay between the First Amendment and a Hostile Working Environment where it was suggested that sexually explicit pictures alone could create a discriminatory job environment. Such materials are not constitutionally protected. Ms. Robinson was awarded "reasonable costs" and attorney fees with nominal damages. In addition Jacksonville Shipyards was required to adopt a sexual harassment policy in the form proposed by Ms. Robinson, her attorneys from the National Organization for Women Legal and Educational Defense Fund. Robinson is on appeal. In June 22, 1992, in *R.A.V. v. St Paul*, the U.S. Supreme Court found that a city "hate crime ordinance" to violate the First Amendment on the basis that it banned speech because of its content.

Civil Rights Act of 1991: Jury Trials and Compensatory Damages Allowed Under Title VII.
The act created new rights for employees who pursue complaints of sexual harassment, as well as other forms of intentional job discrimination under Title VII. Employees may now elect a jury trial and may recover compensatory and punitive damages. Compensatory damages are intended to make a victim whole for any variety of losses shown to have occurred because of the discrimination. Compensatory damages could include money for pain and suffering. The Act places a cap on these newly recoverable damages, depending on the size of the company. Employers in companies with more than 500 employees are subject to the highest fines, with a cap of $300,000. Under the new act employees

Copyright © James J. Van Patten, 19

claiming a hostile working environment may collect damages to compensate them for losses which they can show were a result of the harassment (5:299-303;312).

Where Do We Go From Here?

There are different viewpoints about the increased role of litigation in our society. Some find that it is a reflection of a society in decline, renting its social fabric through divisiveness. Others view increased sensitivity to the feelings of others as enriching the quality of life in our culture. It is clear from the increase in cases regarding hostile working environments and hate crimes (use of offensive language) that more attention will be paid to increased rules, regulations, sensitivity training sessions, written policies concerning acceptable behavior. It is also true that it is very difficult to legislate morality and to do so across generational lines. First Amendment free speech protections will continue to be a concern to many thoughtful citizens especially in situations where control of expression is a concern.

First Amendment Rights: Theory and Practice

A bitter debate is currently raging at the University of New Hampshire and in the legislature over free speech. A fifty-nine year old tenured professor was suspended for remarks he made during a writing class. The J. Donald Silva case has divided faculty, students, legislators, and the public over what speech should not be allowed on the campus, about the context in which a speech was made, about the people to whom disputed remarks are addressed and a speaker's intention. Silva in 1992 told a class that focus in writing could be compared with sex and later that year paraphrased the 1920s-era belly dancer Little Egypt, who he said, once remarked, "Belly dancing is like Jell-O on a plate, with a vibrator under the plate". Three students complained to officials. The professor, Silva, was ordered to have counseling which he refused and sought reinstatement and back pay and unspecified damages for violations of his constitutional right to free speech. He was accused of creating a hostile classroom environment. The University is trying to devise a new code to combat verbal harassment on campus, while the legislature is considering a measure to prohibit the university from using such a code to restrict speech that is protected by the U.S. or the New Hampshire Constitution.(6) Silva took the case to court and a district court judge ordered Silva's reinstatement. District Judge Shane Divine ruled in September 1994 that there was a "substantial likelihood" that Silva would prevail on his First Amendment (academic freedom) claim, since his classroom comments did not meet the legal definition of sexual harassment and were motivated by "legitimate pedagogical reasons." (Gary M. Pavela, " Sexual Harassment: Professor reinstated in sexual harassment case," *Synfax*, September 19, 1994). Silva said he will no longer use his concept of giving students a writing focus such as "You seek a target. You zero in on your subject. You move from side to side. You bracket the subject and center on it. Focus connects experience and language. You and the subject become one." Instead he will speak about zeroing in on a target with a machine gun, since he had considerable military experience. (See Courtney Leatherman ," Free Speech or Harassment?" *The Chronicle of Higher Education*, September 28, 1994: A 22)

Copyright © James J. Van Patten, 1994

The Challenge for Public Schools

Public schools and higher education institutions will, of necessity, increase their funding for meeting new demands for a wide variety of efforts to humanize society and the workplace. In addition, many innocent victims will face an indefensible situation as students may bring lawsuits against unpopular teachers, administrators, and staff with no real justification. It is conceivable that many innocent victims of unjust charges will lose their jobs, have their careers destroyed, and even if eventually cleared of all charges will be permanently impaired. Thomas Scorza, a lecturer in the University of Chicago Law School, notes that the Cardinal Bernardin case shows that a lawyer's blind devotion to his client not only can seriously injure the innocent but can make our legal system appear devoid of moral ballast, not to mention common decency,"Cardinal Bernardin's Unnecessary Ordeal," (*Wall Street Journal*, March 16, 1994: A19).Thus, there may well be a slippery slope situation where well intentioned laws, rules, regulations, legislation lead to unintentional irreparable human tragedy. First Amendment rights to freedom of speech will often be sorely tried as courts try to move between humaneness, justice, and law. In large public school and university campuses, with many students from cultures throughout the world, what may or may not be offensive in other parts of the world, can lead to major conflicts with stress on litigation over speech and behavior. One can be sure that there will be an increased number of textbook revisions to include acceptable language and behavior of students, teachers, staff, and administrators in public schools and universities as has been true of other issues such as multiculturalism, racial and gender themes as well as global concerns. (7)

Perhaps Billie Wright Dziech summarizes the complexities of the issues on sexual harassment best as she finds that no one can state definitely where all the lines concerning sexual harassment should be drawn, and the challenge will become even greater for our students as they move to an increasingly complicated workplace that will include more women, members of minority groups, and people from other cultures. If we cannot provide all the answers, we can teach them to communicate their thoughts, feelings, and intentions with intelligence and clarity. We can encourage them to speak and act judiciously in a world in which it is impossible to predict the responses of others. We can help them to communicate to others their personal boundaries and their distress when those limits are violated. We can affirm the importance of negotiation and cooperation over discord and division.

Dziech continues by noting that the only way in which people can rescue themselves from the confusion and controversy over sexual harassment is to stop attacking one another and start talking. If academicians really believe their own rhetoric about collegiality and rational discourse, the American campus should be the place where that dialogue begins.(8:A48).

Russell in *Dogmatic Wisdom: How the Culture Wars Divert Education and Distract America* (9), discusses an interesting view of our attempt to clean up our language usage. He notes that language gets better as society gets worse. Almost everywhere incidents of racism, violence, and rapes increase, and a deteriorating society may accelerate efforts to

Copyright © James J. Van Patten, 1994

sanitize communication. Stymied by vast social ills, some individuals, especially students and professors, feel impelled to ferret out racist or sexists comments. If we cannot reform society, we can at least clean up objectionable language and abusive gestures. Racism seems intractable, but racist comments, jokes and perhaps research might be eliminated. On our campuses, people watch their language while outside its boundaries, racism and violence thrive. Few can doubt the increasing and catastrophic amount of violence in American society. Everywhere in America the locks, gates, alarm systems are bigger and more sophisticated. City schools spend scarce dollars on installing metal detectors. The climate seems filled with fear and violence. Yet our fascination with gentility and language correctness seems a world apart. Surely, our concern with language usage is well placed but we must move from the world of theory to the real world of our public communities, to our homes, businesses, factories, and to a massive effort to modify human behavior.

As Keith Henderson notes in "Putting a Gag on Abusive Words Challenges Schools at All Levels," verbal violence can be found in any educational setting or level. Bill Martin, Director of Communications for the National Education Association, notes that abusive language has become a very difficult issue for teachers. If teachers were to punish every incident in their classrooms and schools, very little instruction could be accomplished. Some educators feel that vulgarity is part of an adolescent stage. Jim Burns, Director of Membership Services at the National Middle School Association, sees plentiful profanity and violence in the entertainment media and the declining influence of two institutions that have traditionally taught and enforced values--the family and the church. Many educators are current addressing the issue of character education in the professional literature. Teaching civility, courtesy, good communication skills should be encompassed in every classroom and some inner city communities already try this method to develop antiviolence programs.(10) As noted previously, it is extremely difficult to legislate morality. In time the messages, hopefully, will become internalized.

Meanwhile as James R. Delisle in "Reach Out-But Don't Touch," (*Education Week:* September 21, 1994:33) notes teachers are afraid to touch students even in an instructional way. They hold conferences with the door open and in the middle of the room. Many teachers feel all are made to feel guilty for crimes committed by the tiniest minority of colleagues. Teachers are afraid of an enemy of self-doubt and false accusations. There is danger we may lose one of the last and greatest elements or our profession that has guided it sinces its inception: trust.

A State Department of Education Survey

As an addendum to this meeting, I surveyed State Departments of Education as to their guidelines on sexual harassment. Thirty five responses-and one from D.C. (70%) were received from the 50 state departments contacted. In all cases (list of state departments responding is attached) the respondents either have state guidelines and legislation or provided school district with harassment workshops, materials, and policies. Some states provide information and intervention activities on request of school districts. Three states provide treatment programs. The policies are continually being updated and include the following common themes:

Copyright © James J. Van Patten, 1994

Some states do not have policies in place for sexual harassment of students to students, although as noted most cases involved student on student harassment.. Student handbooks that establish regulations for rights and responsibilities are being developed within the guidelines of discipline and conduct in school settings in many state departments of education. All responding state departments have materials on the subject. Many school districts have very comprehensive guidelines and policies for all populations within the schools, administration, faculty, staff, parents, students.

Definitions: Sexual harassment may include, but is not limited to:

1. verbal harassment or abuse.
   sexual innuendoes, suggestive comments, jokes of a sexual nature, sexual propositions, threats.
2. subtle pressure for sexual activity
   non verbal, suggestive objects or pictures, graphic commentaries, suggestive or insulting sounds, leering, whistling, obscene gestures.
3. unnecessary patting or pinching
   unwanted physical contact including touching, attempting or actual kissing or fondling, coerced sexual intercourse, sexual assault..
4. constant brushing against another person's body.
5. demanding sexual favors, accompanied by implied or overt threat, concerning an individual's employment status or grades
6. all educational and cultural institutions in the state will ensure an environment for learning and working that is equitable, supportive, safe and free from sexual harassment.
7. training students and staff in the prevention of sexual harassment; improved deployment of security forces and other safety measures.
8. demanding sexual favors accompanied by implied or overt promise or preferential treatment, with regard to an individual's employment or grade ranking status.

Complaints: (Different titles of offices in the various states) Identifying locations for complaints in Equal Opportunity Office or State Offices of Human Rights, department directors, supervisors or Office of Employee Relations.

Confidentiality
All complaints will be handled in a timely and confidential manner.

Investigation: procedures include guarantees of impartial and fair hearings. All employees shall be protected from coercion, intimidation, retaliation, interference or discrimination for filing a complaint or assisting in an investigation.

Disciplinary Action: Procedures for preventing harassment from recurring based on the seriousness of the offense, may include but are not limited to verbal, written reprimand, suspension, demotion, or termination.

Copyright © James J. Van Patten, 1994

Recognition is giving to the fact that false accusations can have serious effects on innocent individuals.

Issues and Challenges:
A real problem lies in the fact that there are enormous variances in the Office of Civil Rights Regional Offices in dealing with the issue. School districts have clear guidelines laid down by their regional OCR offices but interpretation varies widely. Further OCR is still working with regulations set forth in 1981 although there have been updates in definitions and procedural requirements such as notice and grievance procedures. In addition there are variations in Federal Court decisions pertaining to harassment which will eventually be settled by the Supreme Court.

The need for action is now. In many states there are harassment cases of an ever more serious nature. Third degree sexual behaviors at the elementary school grade level are more frequent. Such cases involve threat of harm, rape, and genital mutilation.

As noted some 85-90% of the harassment cases are student to student, resulting in increased attention to student handbooks identifying responsibilities toward other students. School districts are increasing supervision of hallways and restrooms in schools as well as reiterating behavioral codes on bulletin boards, in teacher, staff and administrative training sessions.

In the long run, although the legal system provides necessary guidelines and grievance procedures, the problem of sexual harassment is best dealt with through education. As Socrates noted over 2,000 years ago *the only evil is ignorance.* Once individuals have knowledge and understanding of moral and ethical behavior toward self and others, the issue of harassment will more effectively be addressed. Our language affects behavior and behavior can and should be modified to reflect the essential ingredients of respect, honor, and esteem of others. Education to meet the problem cannot be limited to formal institutions, such as our schools, but require active participation of all social institutions including churches, civic groups, parental organizations and multi-media corporations. Television, broadcasts, newspapers, governmental officials at all levels have an obligation to become engaged in the fight to preserve human dignity and worth through elevating our language and behavioral conduct. We need to develop a community of shared values to rediscover civility and human dignity in our language and behavior.

References:
(1) Pollock, Ellen Joan (1994) "New Approach Used on Sexual Harassment Claim," *Wall Street Journal,* February 25, 1994:B6.
(2) Trellis, Matthew (1993). "Sexual Harassment Liabilities Detailed: Forum Offers Guidelines for Schools," *The Boston Globe*, December 18, 1993
(3) Sherman, Rorie (1993). "School Districts Sued on Sexual Harassment by Fellow Students: Female Scholars Press for a New Liability," *The National Law Journal,* December 13, 1993:10

Copyright © James J. Van Patten, 1994

(4) Riggs, Robert O., Murrell, Patricia H.,and Cutting, Jo Anne C. (1993). "Sexual Harassment in Higher Education: From Conflict to Community," Washington, D.C. George Washington University, *ASHE-ERIC Higher Education Report.*
(5) Bayly, Susan (1992). "Sexual Harassment Revisited," *Synthesis: Law and Policy in Higher Education*, Fall, 1992:299-303; 312.
(6) State, University Debate Harassment Code," *The Gainesville Sun,* Sunday, Feb. 27,1994:5A
(7) see Sewall, Gilbert T.(1994). "Triumph of Textbook Trendiness," *Wall Street Journal,* March 1:A14.
(8) Dziech, Billie Wright (1993). "The Bedeviling Issue of Sexual Harassment," *The Chronicle of Higher Education*, December 8:A48.
(9) Jacoby, Russell (1994). "Language Reformers Are Guilty of Shifting to A Symbolic World," *Gainesville Sun,* Wednesday, March 2:15A.
(10) Henderson, Keith (1994). "Putting a Gag on Abusive Worlds Challenges Schools at All Levels," *Christian Science Monitor,* Friday, February 25:1,18.

Copyright © James J. Van Patten, 1994

Appendix A

Survey of State Departments of Education

A survey (Appendix A) of fifty state departments of education to determine how states are responding to the sexual harassment adult to student and student to student issue. Thirty five state department (and one from D.C.) (70%) responses were received and tabulated. Three states responded by phone (Arkansas, Nebraska and Mississippi). Appendix A contains the raw data from the survey. Additional action may have been taken on the issue since this 1994 survey was taken. The data are organized according to categories into which responses fall in Appendix B. Appendix C is the survey letter. Appendix D is a summary of state responses. Due to the nature of the subject there are overlapping responses.

Alaska

The State of Alaska does not provide harassment guidelines which each school district is required to implement. It is our opinion that school districts are covered by Federal Titles VII and IX, and Alaska Statute providing for the state commission on human rights. **Jerry Covey, Commissioner, State of Alaska, Department of Education, Goldbelt Place, 801 West 10th St., Suite 200, Juneau, Alaska 99801-1894.**

Arizona

The Arizona Department of Education does not provide sexual harassment guidelines to the school districts. The Arizona School Board Association does provide boiler plate language that districts might use for their particular schools. The policy use is left up to individual school districts to use or modify. As the State Vocational Equity Administrator, I provide training to districts on the topic through a funded technical assistance project. An abstract of Harris v. Forklift Systems, 1993 was provided later as was Arizona School Boards Associations materials on sexual harassment in schools. **Jenny L. Erwin,**
Administrator, Vocational Equity, Arizona Department of Education, 1535 West Jefferson, Phoenix, Arizona 85007.

Arkansas

State department has harassment policy for its personnel. At the time of the survey no information was provided the school districts on the

subject but school district superintendents develop guidelines and policies with the help of legal counsel.

California

California school districts are sent a copy of legislative assembly bill 2900 that requires every educational institution in the state to have a written policy on sexual harassment. The California School Board Association has a copy of a sample policy and shares it with many of California's school districts. **Alicia Hetman, Visiting Educator, Gender Equity/Homeless Education, California Department of Education, 721 Capitol Mall, P.O. Box 944272, Sacramento, California 94244-2720.**

Connecticut

Equity/Title IX laws and regulations are provided to the school districts. Grievance procedures and sexual harassment policies together with resources for dealing with the subject are provided school districts in Connecticut. Districts are obligated to take action on sexual harassment. Included in the material are two recognized forms of unlawful sexual harassment "quid pro quo" casses where a person's entitlement to or enjoyment of a particular benefit is conditioned on sexual favors and "hostile environment" cases where unwelcome conduct unreasonably inteferes with a persons right or benefit by creating an intimidating, hostile or offensive environment. **Vincent L. Ferrandion, Connecticut Department of Education, 165 Capitol Avenue, Hartford, Connecticut 06106.**

Florida

The Florida State Department of Education provides materials including guidelines for the districts. Many districts develop their own guidelines. The material was very thoroughly developed and was concisely packaged.

Georgia

Provides self evaluation checklists, federal register regulations, equity in education, gender equity borchures, U.S. Department of Education brochures as well as a draft sexual harassment policy. **Ishmael C. Childs, Title IV Coordinator, Georgia Department of Education, Office of Special Services, Twin Towers East, Atlanta, Georgia 30334-5060.**

Hawaii

Materials sent to all schools in the state include a brochure on equal employment opportunity, a civil rights complaint procedure for students and parents, a brochure on sexual harassment for intermediate and high school students, and a copy of a nationally-proclaimed poster which the Hawaii State Department of Education developed and distributed to all secondary schools. There is full compliance with Title IX of the Education Amendments of 1972. Extensive materials were provided the surveyer including a Chapter 19 Pamphlet dealing with student misconduct and discipline. Last year sessions on Train-The-Trainer for sexual harassment were given to teachers, counselors, and school adminsitrators to serve as sexual harassment awareness trainers at their schools sites for both students and school employees. In the summer of 1994 the program was offered at four locations throughout the state. Some of the material is published in Korean, Samoan, Chinese, Ilokano, English, Japanese, Tagalog, Vietnamese and Tongan.

Linda Andrade Wheeler, Sex Equity Specialist, State of Hawaii, Department of Education, P.O. Box 2360, Honolulu, Hawaii 96804.

Illinois

The Illinois State Board of Education does not furnish specific guidelines to local school districts on sexual harassment. The Legal Department does furnish school districts with the federal law relative to sexual harassment and advises them to develop their own guidelines. Illinois is a local control state where locally elected school board members are responsible for policy. The agency has a sexual harassment policy and conducts training for all agency staff. **Richard Haney, Assistant Superintendent, Department of Recognition and Street, Illinois State Board of Education,Springfield, Illinois 62777-0001.**

Indiana

Sample school policies on sexual harassment are provided to the school districts in Indiana. Forms are included in the material which provide for grievance guidelines and policy. **Dallas Daniels, Director, Division of Educational Equity Services, Indiana Department of Education, Center for Community Relations and Special Populations, Room 229, State House-Indianapolis, Indiana 46204-2798.**

Kansas

The State of Kansas as of this survey had not developed guidelines but each local school district is authorized to and be responsible for, the guidelines on harassment to be followed in the particular school district. **Rodney J. Bieker, General Counsel, Kansas State Board of Education, 120 S.E. 10th Avenue, Topeka, Kansas 66612-1182.**

Kentucky

The office of legal services, at the time of this survey, did not have information available on the subject. **Kevin M. Noland, Associate Commissioner, Office of Legal Services, Kentucky Department of Education, Capital Plaza Tower, 500 Mero Street, Frankfort, Kentucky 40601.**

Louisiana

The state complies with Title 9 and is implementing regulations in addressing sexual discrimination and harassment in public schools. The state department of education has on its professional staff a Title 9 coordinator who interfaces with and advises all local school districts of their obligations under Title 9. The state coordinator conducts workshops throughout the state, in-servicing local school officials on requirements of Title 9 and compliance procedures. **W. S. Finister, III, J.D. Legal Office, Department of Education, State of Louisiana, P.O. Box 94064, Baton Rouge, Louisiana 70804-9064.**

Maine

The state department of education provides sexual harassment policies as well as a grievance procedure outline. Extensive training and materials are provided to the local school districts. **Rosemary Foster Affirmative Action Coordinator, Department of Education, State House Station 23, Augusta, Maine 04333.**
73105-4599.

Maryland

Guidelines on child abuse that include sexual harassment information is provided to the school district. Each of the 24 local school districts uses the guidelines in developing policy and procedures for their school system. Guidelines and a pamphlet are distributed to all students in high schools and middle schools. The guidelines were distributed in September of 1994. **Mary K. Albrittain, Chief Pupil Services, Drug Free Schools, Maryland State Department of Education, 200 West Baltimore Street, Baltimore, Maryland 21201**

Minnesota

The state school board association provides a sample school board policy prohibiting hassment and violence. A harassment prevention workshop handout is provided along with detailed information about sexual harassment in schools. Literature about lawsuits filed and settlements are included in the material provided districts. **Linda Powell, Minnesota Department of Education, 550 Cedar Street, Saint Paul, Minnesota 55101.**

Mississippi

As of the date of this survey, Mississippi provided no guidelines on sexual harassment to the school districts. School districts develop their own policies to deal with the issue.

Missouri

The state department Technical Assistant Unit provides a packet of information to school districts with regard to sexual harassment. The packet does not contain any strict guidelines or mandates, but contains information about sexual harassment and the creation of a policy. Definitions, educators and student guides, prevention workshops, handouts, and literature on the subject is included.

Steven E. Harris, Supervisor, School Laws, Department of Elementary and Secondary Education, P.O. Box 480, Jefferson City, Missouri 65102

Nebraska

At the request of school districts, Nebraska provide a variety of information including video tapes, presentations to students, model curriculum, loan libary, sample policies, training of staff and model teaching programs. Nebraska has state statutes dealing with the issue. Long before Gwinnett, Nebraska had availability of material warning of supervisory needs to deal with Title IX cases of harassment.

Nevada

The state had no official state guidelines as of the date of the survey but were working on them. **Carole Gribble, Consultant, Sex Equity, State of Nevada, Department of Educaton, Capitol Complex, 400 W. King Street, Carson City, Nevada 89710.**

New Hampshire

The New Hampshire Department of Education does not issue sexual harassment guidelines to the school districts. The state has an anti-discrimination law which covers teachers as employees. The EEO

office offers technical assistance to school districts by conducting teacher workshops, Title IX Conferences, and working with superintendents and building administrators on sexual harassment policies and procedures. These are individually designed. **Susan McKevitt, Administrator, EEO Office, State of New Hampshire, Department of Education, Division of Standards and Certification, 101 Pleasant Street, Concord, New Hampshire 03301.**

New York

The New York State Education Department provides technical assistance and inservice training on request of the local education agencies on a wide variety of subjects including sexual harassment in schools. Training session material varies with the purpose and audience but typically includes copies of legal definitions, lists of behaviors that may be discriminatory, information on research studies, and suggestions related to prevention and advice for victims. **Michael J. Moon, Associate, State Education Department, University of the State of New York, Albany, New York 12234.**

North Dakota

The state department provides a concise and complete packet of information including definitions, examples, hostile environment settings, requirements for compliance with Title IX, policies for employees and students, reporting procedures, action policies as well as a response to "How Do I Protect Myself and Staff from False Accusations of Sexual Harassment?" **Dr. Wayne G. Sanstead, North Dakota Dept of Education, 600 East Blvd. Av. , Bismark, North Dakota 58505.**

Ohio

Ohio has a policy to prohbit discrimination and harassment among its employees. A limited amount of information was provided

Oklahoma

As of this survey, Oklahoma was not providing information on the subject to school districts. The State Board's attorney has written an article on the subject, published in the January 1993 issue of the Oklahoma School Board Journal. The article deals with the investigation process. **Kay Harley, Attorney, State Department of Education, 2500 N. Lincoln Blvd., Oklahoma City, Oklahoma** 73106-0480.

Pennsylvania

Harassment policies for the employees of the state education department were provided. In Pennsylvania schools operate independently and issue their own sexual harassment policies and guidelines. An executive order of the Govenor was issued on prohibition of harassment in Pennsylvania. A guide book on the subject was issued by the Pennsylvania Association of Elementary and Secondary School Principals. **Mr. Chalo Moreano, Affirmative Action Officer, Department of Education, 333 Market St., 10th Floor, Harrisburg, Pa. 17126-0333.**

Rhode Island

Although no specific guidelines are issued to the districts, conferences are sponsored periodically to help school district staff develop awareness and appropriate strategies. A state policy on sexual harassment developed by the state equal opportunity office together with a copy of state regulations pursuant to the state law prohibiting discrimination based on sex was provided. **Frank R. Walker III, Director, Office of Equity and Access, State of Rhode Island & Providence Plantations, Department of Education, 22 Hayes Street, Providence, Rhode Island 02908**

South Carolina

The state department does not publish guidelines on the subject. We do supply a model language program to the school districts. They use similar language for both employee and student harassment at this point. We our in the process of revising our model policy manual and will be providing additional guidelines this sumer. **Elizabeth F. Warren, General Counsel, South Carolina School Boards Association, 1027 Barnwell Street, Columbia, South Carolina 29201.**

Tennessee

Tennessee does not provide guidelines or law from the state level concerning this topic. Any violation involving sexual harassment would fall under federal law. A 1989 Department of Personnel harassment policy guidelines was provided.

Scott Owens, Administrative Assistant, Tennessee State Department of Education, Division of Accountability, 5th Floor, Gateway Plaza, 710 James Robertson Parkway, Nashville, Tennessee 37243-0376.

Utah

All 40 school districts in the state have developed sexual harassment policies.

The state department has a sexual harassment prevention program developed several years ago to train all state supervisors. A manual was adopted by the department for use with schools. Several different programs have been used with students which mix character development with cautionary injunctives about how student treat one another. One program which has proven very successful is a video/teacher guided lesson called "Crossing the Line" by Kirchener/ Reese of Minneapolis, Minnesota. **Mary A. Peterson, Gender Equity Specialist, Utah State Office of Education, 250 East Fifth South, Salt Lake City, Utah.**

Vermont

The equity team of the Vermont Department of Education, in partnership with interested individuals has developed a sexual harassment and grievance policy and grievance procedures. The model policy represents a commitment to provide safe, comfortable, and supportive learning and working environments. **Paul C. Passher and Richard P. Mill, Vermont Department of Education, 120 State St., Montepelier, Vermont 05620.**

Washington

Washington State has a legislative act House Bill 2153 relating to school district sexual harassment policy. The state department provides copies of the bill as well as a detailed manuscript entitled "Can't Have Fun Anymore," setting forth extensive information and guidelines on harassment. The presenter of the material was Darcy Lees, Program Supervisor, OSPI. In addition, a DESCA questionnaire for students and rating a class was included. **Judith A. Billings, Old Capitol Building, P.O. Box 47200, Olympia, Washington 98504-7200.**

Washington, D.C.

The Office of Superintendent of the Public Schools of the District of Columbia has clear guidelines and district policy prohibiting sexual harassment in any form. Comprehensive information fact sheets are provided as well as procedures by which allegations of harassment may be filed, investigated, and adjudicated. **Office of the Superintendent, Public Schools of the District of Columbia, 45 Twelfth Street, N.W., Washington, D.C. 20004.**

West Virginia

The West Virginia Board of Education has a comprehensive developmental guidance policy for schools in West Virginia identifying prohibited discriminatory behaviors. The board also provides a health education program of study identifying at risk, and self concept behaviors. Parental education curriculum policy, student handbook of rights and responsibilities, student and teacher codes of conduct, and other material are provided school districts. The materials are broad based covering a wholistic approach to student, teacher, parents, and staff responsibilities. **William A. Toussaint, Legal Assistant, West Virginia Department of Education, Building 6/1900 Kanawha Blvd. E. Charleston, West Virginia 25305-0330.**

Wisconsin

The Department of Public Instruction disseminates pupil non-discrimination guidelines that describe the state statute that prohibits discrimination including harassment. An "Educational Equity for All Public School Students" brochure describes state law and how complaints or appeals might be filed. In addition a packet of materials "Preventing harassment: Information for Wisconsin K-12 Public School Educators" describing state anf federal laws, cases and guidelines is provided to school districts. The sexual harassment guidelines are detailed and extensive. **Melissa Keyes, Consultant, Sex Equity Programs, Juanita S. Pawlisch, Assistant Superintendent for Handicapped Children and Pupil Services, State of Wisconsin, Department of Public Instruction, 125 South Webster Street, P.O. Box 7841, Madison, Wisconsin 53702.**

Wyoming

A student's guide to sexual harassment is available at the State Department of Education but the state board has not issued guidelines to the districts. Response indicated that it is a state in which school districts have local control over education. **Lois Mottonen, Gender Equity Coordinator, Vocational and Applied Technology Unit, Wyoming Department of Education, Hathaway Building, 2nd Floor, 2300 Capitol Avenue, Cheyenne, Wyoming 82002-0050.**

Appendix B

Sexual Harassment Policy

State Departments of Education
Dissemination Policy (Informing districts)

Trains All State Supervisors in Harassment Prevention Methods.	UT. Maryland, Conn. R.I
No guidelines.	Oklahoma
No strict guidelines but provides comprehensive information packets, video tapes, model curriculum, sample policies, training of staff often on request of school districts.	Mo., N.Y. Ga.,Nebraska, WI, Maryland, SC
Through providing state Legislation Bills such as California Assembly Bill 2900; Washington State, Supt. of Public Instruction develops guidelines and regulations. WV Superintendent interprets legislative acts.	CA. WA. WV. WY. WI. Maryland, N.D. PA NY. Conn. Indiana, GA., MN, IN.
Copies of written guidelines, federal legislation: Civil Rights Act of 1964; Title IX of 1972 Education Amendments;	UT.MO.CA.WA.WV.WI Maryland, Hawaii, Florida, LA.Nebraska Ill.NH.NY.Conn.GA.RI.Wa.DC, AZ.
Written policy prominently displayed. Rules of appropriate behavior	UT. MO.CA.WA.WV.MN, TN.

Leaves policy to districts-student guides to harassment often provided. MINN.	WY. WI. Maryland. ND. FL.PA. NY. IN. RI.
Information distributed through materials from national and state school boards associations	MO.AZ.UT.WV.WI.MN.ND.

Definition (Examples, forms)

How it affects everyone	
Student guidelines	
Examples of appropriate and inappropriate behavior	
Who is a harasser.	
How can you tell actions that are appropriate and legal	
What is a hostile environment	UT. MO.CA. WA. WV. WY. WI.Maryland. ND. MINN.. Maine.Hawaii. FL. Alaska.VT. Tenn.PA.OH.NY.Conn.GA. RI. WA.D.C. IN.

Methods of Enforcement

Disciplinary Procedures	
Prevention	
Remedies	
Sample letters to harasser	
What to do if harassed.	
Individual rights and responsibilities	WY.Minn.MA.HA.FL. VT. Alaska.NY.GA.RI.IN.

Information About Legal Exposure

WI.MA.N.D.Minn.HA.AL. VT.Tenn. N.Y.IN.RI.LA.

How Complaints Can Be Filed	
Formal Procedures	WI.MA.AL.NY.GA.IN.N.D HA. VT. Tenn. GA. RI.
Confidentiality	WI. MA.N.D.HA.FL.AL. NY. GA.IN.
Prevention	WI. N.D. Minn. NY. GA.
Treatment	MA. HA. RI.
Left to Districts	KA.Tenn.Kentucky. MISS.ARK.WY.Alaska,Nevada
Follows only state & federal guidelines	Alaska
Primarily state guidelines	AR.SC.LA

Resources Found Helpful in Dealing With the Harassment Issue

"Crossing the Line" Kircherner/Reese, Minneapolis

" Sexual Harassment in Schools. What it is? What to do? NASBE Publications, 1012 Cameron Street, Alexandria Virginia 22314 (National Association of State Boards of Education).

"About Sexual Harassment in the Workplace," South Deerfield, Ma.: Channing L. Bete Co., 1990. Booklet #48462. 800 628 7733.

"Sexual Harassment: It's Not Academic," Washington, D.C. US Department of Education, Office for Civil Rights, 1988.

Lorna Golnar, "A Student's Guide To Sexual Harassment," Cheyenne: Wyoming Commission for Women and a video "The Power Pinch,"

Wyoming Dept. of Health, Hathaway Bldg., Cheyenne, 82002

Melissa Keyes and Dorothy Le Page, "Pupil Nondiscrimination Guidelines," Madison: Wisconsin Dept.of Public Instruction, 1993. Bulletin 94050, and Melissa Keyes, "Preventing Harassment: Information for Wisconsin K-12 Public School Educators," Wisconsin Department of Public Instruction.

"Sexual Harassment, A Guide for Administrators and Supervisors," Harrisburg, Pennsylvania Associations of Elementary and Secondary School Administrators and Supervisors," Harrisburg: Associations of Elementary and Secondary School Principals, 1993. 717 233 3001.

Equity for Women in the 1990s, Albany: University of the State of New York: The State Education Department, 1993.

"Legal Sources and Recourses for Sexual Harassment," and "Title IX Line," Ann Arbor: Center for Sex Equity in Schools, 1045 SEB, College of Education, U of Michigan 48109-1259.

"Guidelines for Policies Addressing Sexual Misconduct Toward Students in Public Schools," Tallahassee: Florida Department of Education, 1992.

Appendix C

May 1994 — Follow up in August and November 1994 to increase responses

I would appreciate your assistance in a data gathering project dealing with sexual harassment of students by other students and by school employees. Would you please send me any sexual harassment policies, guidelines, and interventions that your office directly or indirectly provides school districts in your state? If your office does not send information to the districts, what other avenues are provided for developing district policies on harassment?

Harassment is an emerging area in the law and new interpretations continue to evolve. In *Franklin v. Gwinnett County Public Schools* (1992) the Supreme Court found that in cases of intentional sex discrimination, school districts may be required to provide appropriate relief including damages. Recent federal court decisions on student to student harassment have supported School Districts but there will be different rulings in various states and courts regarding the subject. Also, the Office for Civil Rights of the U.S. Department of Education will be identifying expanded areas of harassment. School districts will increasingly need to be up to date on the subject. Data gathered from the 50 State Departments of Education will be helpful in addressing the issue.

If you would like a synthesis of the information collected from this research please indicated by checking the box. ☐

Cordially,

James J. Van Patten, Ph.D.
Department of Educational Leadership
GE 244 College of Education
University of Arkansas, Fayetteville 72701

501 575 5109
Fax501 575 4681

Appendix D

State Department of Education Survey

	Respondents	Guidelines (a) Materials for Districts	Leaves to (b) School District	Materials provided by School Boards Association	Treatment Programs
1.	Alaska		x		
2.	Arizona	x	x	x	
3.	Arkansas		x		
4.	California	x			
5.	Connecticut	x			
6.	Florida		x		
7.	Georgia	x			x
8.	Hawaii	x			x
9.	Illinois	x			
10.	Indiana		x		
11.	Kansas		x		
12.	Kentucky		x		
13	Louisiana	x			
14.	Maine		x		
15.	Maryland	x	x		
16.	Minnesota	x	x	x	
17.	Mississippi		x		
18.	Missouri	x		x	
19.	Nebraska	x			
20.	Nevada		x		
21.	New Hampshire	x			
22.	New York	x	x		
23.	North Dakota		x		
24.	Ohio	x			
25.	Oklahoma		x		
26.	Pennsylvania		x		
27.	Rhode Island		x		x
28.	South Carolina		x		
29.	Tennessee	x	x		
30.	Utah	x		x	
31.	Vermont		x		
32.	Washington	x			
33.	Washington,DC	x			
34.	West Virginia	x		x	
35.	Wisconsin	x	x		
36.	Wyoming		x		

(a) Utah State Department trains all state supervisors in harassment prevention methods. Missouri, New York, Georgia, Nebraska has no strict guidelines but provides comprehensive information packets, video tapes, model curriculum, sample policies, training of staff on request of school district. Some states provide state legislative bills such as California. Copies of written guidelines and federal legislation provided. Utah, Missouri, California, Washington, West Virginia, Wyoming, Wisconsin, Maryland, North Dakota, Minnesota, Maine, Hawaii, Florida, Alaska, Vermont, Tennessee, Pennsylvania, Ohio, New York, Connecticut, Georgia, Rhode Island, and Washington, DC state